IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

MONDAY, THE 24TH SEPTEMBER 2007 / 2ND ASWINA 1929

Crl.L.P..No. 674 of 2007()

CC.1264/2004 of JUDICIAL FIRST CLASS MAGISTRATE COURT -II (MOBILE),KOTTAYAM

.....

PETITIONER/COMPLAINANT:

C.R.RAJAN BABU,
S/O. RAJAN, RAJA BHAVAN, NEAR UNION CLUB,
KOTTAYAM.

BY ADV. SRI.C.ANILKUMAR (KALLESSERIL)

RESPONDENTS: ACCUSED & STATE

---

1. SHYLA MOHAN, PROPRIETOR,
VARNA DESIGNERS, OPP. KALOOR POST OFFICE,
KALOOR, RESIDING AT SAPTHAVARNAM,
EDAPPALLY, KOCHI-682 024.

2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM..

BY PUBLIC PROSECUTOR SRI. PUZHAKKARA MOHAMMED - R2

THIS CRIMINAL LEAVE PETITION HAVING COME UP FOR ADMISSION ON 24/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.THANKAPPAN, J.

CRL. L.P. NO. 674 OF 2007

Dated this the 24th day of September, 2007

O R D E R

This petition for special leave to appeal is filed against the judgment in C.C. No.1264 of 2004 on the file of the Judicial First Class Magistrate's Court II (Mobile), Kottayam.

2. The case of the petitioner - complainant was that as per the agreement entered into between him and the first respondent - accused, he paid an amount of Rs.5,00,000/- to the accused for the work of interior decoration of his house and as the work could not be completed as per the agreement, the accused issued Ext.P1 cheque for an amount of Rs.5,00,000/- in favour of the complainant . It was further alleged in the complaint that when the cheque was presented to the bank for encashment, the same was dishonoured on the ground of insufficiency of funds in the account of the accused. After complying with the statutory provisions regarding notice and seeing that the amount covered by the cheque was not repaid by the accused, the complaint was filed. To prove the case against

the accused, the complainant himself was examined as PW.1 and Exts.P1 to P10 were produced. On the side of the defence, the accused and another witness were examined as DWs.1 and 2 respectively and Exts.D1 to D6 were produced. On closing the evidence of the complainant, the accused was questioned under Section 313 Cr.P.C. Denying the transaction alleged in the complaint, the first respondent - accused stated that the cheque in question was not issued to the petitioner - complainant in connection with any transaction, but was given as security and that too not to the complainant, but to one Meera Vijayan in connection with another financial transaction. After considering the entire evidence, the trial court found the accused not guilty and acquitted her.

3. The trial court found that there was no valid consideration for the issuance of Ext.P1 cheque. If consideration is not proved, as per the principles laid down in the decision reported in **Narayana Menon v. State of Kerala, 2006(3) K.L.T. 404 (S.C.)**, an offence under Section 138 of the Negotiable Instruments Act, 1881 cannot be attracted. The trial court also found that the handwriting and the ink in which the name, date and amount are written in Ext.P1 are different from the handwriting and ink in which the signature in Ext.P1 appears. Considering the entire facts and circumstances of the case, this Court is of the view that the finding of the

trial court is justifiable and requires no interference.

The Crl. Leave Petition is accordingly dismissed.

(K.THANKAPPAN, JUDGE)

sp/

K. THANKAPPAN, J.

CRL.A. NO.

JUDGMENT

SEPTEMBER, 2007